

1 reapply for admission to the United States, in violation of 8 U.S.C. § 1326(a) and enhanced
2 by § 1326(b)(2).

3 The Court imposed a sentence of thirty months. The Court also placed Petitioner on
4 supervised release for three years, with the condition that he “shall not commit another
5 federal, state, or local crime during the term of supervision.”

6 On August 15, 2005, Petitioner entered into an agreement with the United States in
7 which he admitted to violating the terms of his supervised release by committing the offense
8 of re-entry after deportation, in violation of 8 U.S.C. § 1326(a) and (b)(2). Pursuant to the
9 agreement, Petitioner waived “any and all motions, defenses, probable cause determinations,
10 and objections which [he] could assert to the information or indictment, or petition to revoke,
11 or to the Court’s entry of judgment and imposition of sentence upon [him] providing the
12 sentence is consistent with [the] agreement.” In addition, Petitioner waived “any right to
13 collaterally attack [his] conviction and sentence in a habeas petition under 28 U.S.C. § 2255
14 or motion under any other statute or rule.”

15 The agreement provided for a sentencing range of 4-27 months, depending on
16 Petitioner’s criminal history. The Court imposed a sentence of 5 months, to be served
17 consecutive to his thirty month sentence in 05-CR-830-TUC-FRZ.

18 19 Discussion

20 In his motion, Petitioner seeks a reduction of his sentence. He contends that his right
21 to equal protection is violated by the fact that deportable alien prisoners, unlike their United
22 States citizen counterparts, are ineligible for a one-year sentence reduction for attending a
23 drug treatment program during incarceration and early release to a half-way house. His
24 motion also contains a petition for commutation of sentence, which is not within this Court’s
25 authority to grant or deny. *See Graham v. Angelone*, 73 F. Supp. 2d 629, 630 (E.D.
26 Va.1999).

27 Petitioner waived “any right to collaterally attack [his] conviction and sentence in a
28 habeas petition under 28 U.S.C. § 2255 or motion under any other statute or rule.”

1 Alternatively, the Ninth Circuit Court of Appeals rejected Petitioner's argument in
2 *McLean v. Crabtree*, 173 F.3d 1176 (9th Cir. 1999). In that case, the Ninth Circuit found
3 that there was no equal protection violation and held that "excluding prisoners with detainees
4 from participating in community-based treatment programs, and consequently from sentence
5 reduction eligibility, is at least rationally related to the BOP's legitimate interest in
6 preventing prisoners from fleeing detainees while participating in community treatment
7 programs." *Id.* at 1186.


8
9 **Conclusion**

10 Accordingly,

11
12 **IT IS ORDERED** that Petitioner's § 2255 Motion (U.S.D.C. document #49 in
13 CR-01-616-PHX-FRZ) is **DENIED** and this case (CV-05-632-TUC-FRZ) is **DISMISSED**.

14
15 **IT IS FURTHER ORDERED** that the Clerk of the Court **SHALL SERVE** a copy
16 of the Motion and this Order on Respondent and **SHALL SERVE** a copy of this Order on
17 Petitioner.

18
19 DATED this 28th day of October, 2005.

20
21
22 
23 FRANK R. ZAPATA
24 United States District Judge
25
26
27
28